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WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;
Plaintiff,
vs.
HAWAIIAN EXPRESS SERVICE,
INC., a California corporation; et al.
Defendants.

) Civ. No. CV03 00385 SOM-LEK
(Copyright)
) DECLARATION OF TIMOTHY J.
) HOGAN IN SUPPORT OF
) PLAINTIFF WAYNE BERRY'S
) OPPOSITIONS TO DEFENDANTS'
) PCT, EMPLOYEES AND C&S'
) MOTIONS FOR ATTORNEY'S
) FEES AND COSTS FILED ON
) MARCH 23, 2006; EXHIBITS 1 TO
) 14; CERTIFICATE OF SERVICE
)
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**DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF
PLAINTIFF WAYNE BERRY'S MEMORANDUM
IN OPPOSITION TO DEFENDANTS PCT, EMPLOYEES AND C&S'
MOTIONS FOR ATTORNEYS' FEES
AND COSTS FILED ON MARCH 23, 2006**

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of Hawaii and I make this declaration under penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. On February 9, 2004, I sent a letter to Lyle Hosoda, Esq., representing the former Fleming employees offering to dismiss the employee defendants for an agreement to enter into a stipulated injunction against future infringements. A true and correct copy of that letter is attached as Exhibit "1."
2. On February 9, 2004, I sent an offer of settlement to Lex Smith the attorney representing Fleming and C&S in this case. A true and correct copy of that letter is attached as Exhibit "2."
3. Attached hereto as Exhibit "3" is a true and correct email from a deleted directory in the Guidance Before Image files that I discovered on or about April 6, 2006. It took me several hours of searching to find this email that is one of several thousands that were produced.

4. On or about July 13, 2004 I received a letter from Fleming Companies, Inc. senior bankruptcy counsel, Richard Wynne, Esq., regarding a purported offer to settle the matter and included a term sheet. A true and correct copy of that letter is attached as Exhibit "4." To the best of my recollection, this was the first response I had to my February 9, 2004 letter.

5. Attached hereto as Exhibit "5" is my July 14, 2004 response to Mr. Wynne's July 13, 2004, letter. To the best of my knowledge, I never got a response to my July 14, 2004 letter from Mr. Wynne.

6. Attached hereto as Exhibit "6" is a true and correct copy of an excerpt copy of pages from the Court's June 27, 2005 Order regarding various summary judgment motions.

7. Attached hereto as Exhibit "7" is a true and correct copy of the Court's Second Amended Judgment in a Civil Case filed on March 16, 2006.

8. Attached hereto as Exhibit "8" is a true and correct excerpt of the Transcript of Proceedings before the Honorable Susan Oki Mollway, United States District Court Judge for the District of Hawaii, taken in this proceeding on October 11, 2005 at page 24 lines 6 to 9.

9. Attached hereto as Exhibit "9" is a true and correct copy of the Jury Special Verdict dated March 7, 2006.

10. Attached hereto as Exhibit "10" is a true and correct copy of the District Court's May 13, 2004 Order Affirming the Magistrate's limitations on discovery related to C&S and Fleming.

11. Attached hereto as Exhibit "11" is a true and correct copy of the Amended Answer filed jointly by Fleming and the C&S defendants, filed on August 5, 2004.

12. Attached hereto as Exhibit "12" is a true and correct copy of the Answer filed on July 13, 2004, by the Employee Defendants regarding the Plaintiff's Second Amended Verified Complaint.

13. Attached hereto as Exhibit "13" are true and correct excerpt pages from the Plaintiff's Second Amended Verified Complaint filed on Jun 18, 2004.

14. Attached hereto as Exhibit "14" is a true and correct copy of the Affidavit of Disinterestedness of Lyle Hosoda that was filed in the Fleming bankruptcy, In re Fleming Companies, Inc., Bk. No. 03-10945 (MFW) (Bankr. Del.).

Dated: Honolulu, Hawaii April 20, 2006.

/S/Timothy J. Hogan
Timothy J. Hogan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; et al.)	
)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF PLAINTIFF WAYNE BERRY'S MEMORANDUM IN OPPOSITION TO DEFENDANTS PCT, EMPLOYEES AND C&S' MOTIONS FOR ATTORNEYS' FEES AND COSTS FILED ON MARCH 23, 2006; EXHIBITS "1" TO "14" was served on the following at their last known addresses:

Served Electronically on April 20, 2006:

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DATED: Honolulu, Hawai'i, April 20, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY